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**UTAH LABOR COMMISSION**

**JUSTIN PETERSON,**

**Petitioner,**

**vs.**

**UTILITY TRAILER and LIBERTY  
MUTUAL INSURANCE CO.,**

**Respondents.**

**ORDER ON MOTIONS  
FOR REVIEW**

**Case No. 04-0203**

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Respondents Utility Trailer and Liberty Mutual Insurance Co., (referred to jointly as “Utility Trailer”) and Petitioner Justin Peterson each ask the Utah Labor Commission to review Administrative Law Judge Sessions’ decision regarding Mr. Peterson’s claim for benefits under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

On March 3, 2004, Mr. Peterson filed an Application with the Commission claiming additional medical benefits and disability compensation for a back injury caused by an accident at Utility Trailer on May 20, 1993. Utility Trailers answered Mr. Peterson’s claim by acknowledging the May 1993 work injury and reporting that Mr. Peterson had reinjured his back in a second accident at Utility Trailer on August 27, 1995. Utility Trailer asserted that it had already paid the medical and disability benefits due Mr. Peterson for his back injury.

The parties waived the hearing in this matter and submitted the relevant facts in a written stipulation. The parties agreed that Judge Sessions should appoint a medical panel to answer several questions set forth in the stipulation. Judge Sessions appointed the panel as requested. Based on the panel’s report, Judge Sessions concluded Mr. Peterson was entitled to permanent partial disability compensation for a 5% whole person impairment, which Utility Trailer had already paid. Judge Sessions also found Utility Trailer liable for unpaid expenses, if any, of medical care Mr. Peterson received prior to August 21, 2000. Later, Judge Sessions issued a supplemental order requiring Utility Trailer to pay Mr. Peterson’s attorney’s fees in the amount of \$500.

In challenging Judge Sessions’ decision, Mr. Peterson argues that the medical panel’s opinion should be disregarded in favor of other medical evidence supporting Mr. Peterson’s claim. Utility Trailer contends that Judge Sessions lacked authority to order Utility Trailer to pay Mr. Peterson’s attorney’s fees.

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**FINDINGS OF FACT**

The following facts are relevant to the parties' motions for review. On May 20, 1993, Mr. Peterson injured his back after falling on to a U-bolt. He was treated for lower back pain up through May 23, 1994. No further treatment was sought until September 1, 1995, when he reported low back pain with muscle spasms following another work accident at Utility Trailer on August 27, 1995. Dr. Bender, Mr. Peterson's treating physician, opined that Mr. Peterson reached medical stability by March 11, 1996, and was left with a 5% whole person impairment for the 1993 injury and 1995 reinjury.

Mr. Peterson continued to receive treatment for low-back pain over the next several years. By March 2004, when Mr. Peterson filed his Application to commence this proceeding, Utility Trailer had paid more than \$60,000.00 in compensatory benefits and medical expenses, including payment for the 5% permanent partial disability.

Based on the medical panel's report, the Commission finds that Mr. Peterson's continuing low-back problems and his further medical treatment are not related to his work accidents at Utility Trailer. Also based on the panel's report, the Commission finds that Mr. Peterson's medical treatment through August 2000 was necessary to treat his work injuries, but that treatment thereafter was not required for those injuries.

**DISCUSSION**

As already noted, Mr. Peterson and Utility Trailer have each filed motions for review of Judge Sessions' decision. The Commission addresses each of their arguments below.

Mr. Peterson's challenge to the medical panel opinion. The parties agreed to appointment of an impartial panel of experts to evaluate Mr. Peterson's claim. Judge Sessions appointed the panel as requested and then relied on the panel's opinion in declining to award additional benefits to Mr. Peterson. Mr. Peterson now argues that the panel's report is biased against him and is contrary to other, more persuasive medical evidence. The Commission disagrees. The panel's two medical specialists reviewed Mr. Peterson's full medical record, personally examined him, and also considered the opinions of other medical providers who had treated or examined Mr. Peterson. The Commission views the panel's report as impartial and persuasive. The Commission concurs with Judge Sessions' reliance on the report in denying Mr. Peterson's claim for additional benefits.

Utility Trailer's challenge to award of attorney's fees. Under Utah's workers' compensation system, injured workers must generally pay their own attorney's fees out of workers' compensation disability compensation generated as a result of the attorney's services. See Commission Rule R602-2-4; see also *Olympus Oil v. Harrison*, 778 P.2d 1008 (Utah App. 1989). Judge Sessions' order that Utility Trailer pay Mr. Peterson's attorney's fees is inconsistent with the foregoing general rule. While Judge Sessions did not identify the legal basis for his award of attorney's fees, the

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Commission presumes he relied on § 34A-1-309(4) of the Utah Labor Commission Act, which allows the Commission to require an employer or insurance carrier to pay attorney's fees in some "medical only" claims. Section 34A-2-309(4) provides as follows:

(4) (a) If the commission orders that only medical benefits be paid, the commission may award reasonable attorney fees on a contingency basis for medical benefits ordered paid if:

(i) the commission's informal dispute resolution mechanisms were fully used by the parties prior to adjudication; and

(ii) at no time were disability or death benefits or interest on disability or death benefits at issue in the adjudication of the medical benefit claim.

(b) Attorneys' fees awarded under Subsection (3)(a) shall be paid by the employer or its insurance carrier in addition to the payment of medical benefits ordered.

The circumstances of this case fail to meet several requirements of the foregoing statute: 1) Disability benefits were at issue; 2) There is no evidence that informal dispute resolution was used; and 3) Mr. Peterson was not successful in obtaining additional medical benefits. Consequently, § 34A-2-309(4) does not support Judge Sessions' order that Utility Trailer pay Mr. Peterson's attorney's fees. The Commission is unaware of any other basis for such an order. The Commission therefore sets aside Judge Sessions' supplemental order awarding such fees.

**ORDER**

The Commission affirms Judge Sessions' order denying Mr. Peterson's claim for additional disability compensation and medical benefits. The Commission sets aside Judge Sessions' order requiring Utility Trailer to pay Mr. Peterson's attorney's fees. It is so ordered.

Dated this 28<sup>th</sup> day of July, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner

**IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOW ON NEXT PAGE**

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**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.